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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communication Commission
Room TW-A325, The Portals
445 Twelfth Street
Washington, D.C. 20554

Re: In the Matter of MCI WorldCom Inc.'s Freedom of Information Act Request
and In the Matter of Bell Atlantic's Freedom of Information Act Request,
CC Docket No. 99-117/ASD File No. 99-22

SBC Communications Inc. (SBC) submits the attached draft "Protective Order" pursuant to a discussion with Commission Staff at our Ex Parte Meeting of July 14, 1999 with the Common Carrier Bureau. At this meeting we discussed the Freedom of Information Act Requests listed above and subsequent opposition filed by SBC with the FCC on July 9, 1999. In this meeting SBC expressed concern about the precedent the FCC might set if it chose to release detailed audit information to the public, particularly any auditor work papers. We also noted that the FCC's recent tariff investigation¹ allowed companies to protect from disclosure certain highly confidential vendor-specific information including vendor contracts, pricing information and invoices.

At this meeting, SBC suggested the use of a protective order to resolve the manner in which requested information could be released and Staff indicated that it would be helpful for SBC to submit a proposed protective order for the FCC's consideration. A copy of a proposed protective order is attached.

¹ In the Matter of CC Docket 95-116 and 99-35 Long Term Telephone Number Portability—Pacific Bell and Southwestern Bell Telephone Company Confidential Documents/Vendor Data—Tariff Investigation Related to Pacific Bell Tariff FCC No. 198, Transmittal No. 2029 and Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2745; Request for Confidential Treatment Pursuant to 47 CFR 0.457(d). See May 17, 1999 letter to Ms. Magalie Salas, Secretary of the FCC from Ms. Chris Jines, SBC. See also related Protective Order dated January 8, 1999.

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An original and two copies of this letter are being submitted. Acknowledgement and date of receipt of this transmittal are requested. A duplicate transmittal letter is attached for this purpose.

Please include this letter in the record of these proceedings in accordance with Section 1.1206(a)(2) of the Commission's Rules.

Sincerely,

A handwritten signature in black ink, appearing to read "J Fry", with a long vertical line extending downwards from the end of the signature.

Jeannie Fry
Director, Federal Regulatory

Attachment

Cc: Mr. Ken Moran, Chief, Accounting and Audits Division
Mr. Andy Mulitz, Chief, Legal Branch, Accounting and Audits Division
Ms. Lisa Zaina, Deputy Chief, Common Carrier Bureau
Ms. Deena Shetler, Common Carrier Bureau
Ms. Mary Brown, MCIWorldCom

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
MCI WorldCom Inc.)	FOIA Control No. ____
Freedom of Information Act Request)	
)	

PROTECTIVE ORDER

1. On various dates throughout the Federal Communications Commission's (Commission) audit in 1997 and 1998, in connection with this proceeding, CC Docket No. 99-117, ASD File No. 99-22, Ameritech, Bell Atlantic, BellSouth, Pacific Bell, Southwestern Bell Telephone Company and USWest (collectively referred to herein as "RBOCs") submitted certain data to the Commission in support of their requests that Commission auditors reclassify or "rescore" items shown as "not found" in the preliminary results of the field audits performed pursuant to this proceeding at numerous RBOC central offices. The data submitted by the RBOCs for this purpose will be referred to collectively in this order as "Supporting Data." On June 22, 1999, MCI WorldCom ("MCI") submitted a Freedom of Information Act ("FOIA") Request seeking disclosure of the Supporting Data, as well as workpapers and associated information compiled by Commission staff during the audit ("Workpapers"). The RBOCs all filed timely oppositions to the MCI request, asserting, in pertinent part, that the Supporting Data contained confidential information belonging to the respective RBOC, as well as to third-party vendors, that was protected from disclosure under FOIA Exemption 4, and that the Workpapers were exempt from disclosure under FOIA Exemptions 4 and 5. On July 7, 1999, Bell Atlantic submitted a FOIA Request for the Workpapers pertaining to the "scoring" of all continuing property records ("CPR") selected for physical inspection.

2. Accordingly, on this date, the Commission is adopting both this protective order and ruling that the Supporting Data and a limited portion of the Workpapers must be disclosed, pursuant to this protective order, to all interested parties who properly execute the order as set forth herein, for the sole purpose of addressing Issue No. 2 of the Commission's April 7, 1999 Notice of Inquiry in this docket, to wit: "the validity and reasonableness of the methodology used by the Bureau's auditors in determining whether to rescore or modify a finding during a field audit that equipment was 'not found.'"

Definitions

3. The term "**party**" as used in this Protective Order means any interested party that is participating in CC Docket No. 99-117, who seeks access to the Supporting Data and/or Workpapers in order

to address Issue No. 2. The term “**Authorized Party**” shall mean a person or entity who has complied with all prerequisites of this Order necessary for that person or entity to be allowed access to the Supporting Data and/or Workpapers.

4. For purposes of this Order, “**Confidential Information**” shall include:

(i) information submitted to the Commission by the producing party that has been so designated by the producing party and that the producing party has determined in good faith constitutes trade secrets and commercial or financial information that is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), whether that information is information belonging to the producing party or to a third party, such as a vendor;

(ii) audit staff workpapers and associated information compiled by Commission staff subject to exemption from disclosure under Exemptions 4 and 5 of the Freedom Information Act, 5 U.S.C. § 552(b)(5); and

(iii) information submitted to the Commission by the producing party that has been so designated by the producing party and that the producing party has determined in good faith falls within the the terms of Commission orders in this proceeding designating items for treatment as confidential.

Confidential Information shall also include any other information specifically designated by the Commission in this proceeding as confidential, whether previously or in the future.

Procedure

5. **Designation as “Confidential” and Redaction of Documents.** Each RBOC has designated or may designate certain documents and/or information contained within its Supporting Data as “Confidential Information” consistent with the definition of that term in this Protective Order. All such documents and information have been or shall be clearly labeled by the producing RBOC to show that the documents are considered “Confidential.” Furthermore, each producing RBOC may redact or remove vendor specific information contained within its Supporting Data that was originally provided by a third-party vendor, including, but not limited to cost and/or price data, before disclosing the Supporting Data pursuant to this Order. The RBOCs shall provide the redacted Supporting Data to an Authorized Party within 90 days after its receipt of such Authorized Party’s request pursuant to this Order seeking disclosure of the Supporting Data. The Commission has segregated a limited portion of the Workpapers that will be made available pursuant to this Order and may redact certain information from these Workpapers before they are made available to anyone pursuant to this Order. Because vendor-specific information, including, but not limited to cost and/or price data, may also be contained within or referenced in the Workpapers, each RBOC has the right to review the Workpapers associated with its own audit and redact such information before the Workpapers are disclosed to any Authorized Party. For this purpose, the Workpapers requested by any Authorized Party that the Commission has determined that it will disclose shall be made available to the RBOC to which they pertain for copying and redaction, upon request made within 10 working days after

the Commission's receipt of an Authorized Party request pursuant to this Order seeking disclosure of the Workpapers, in whole or in part. The RBOC(s) performing the redaction shall do so only upon copies of the Workpapers, made at the RBOC's expense, and shall return a copy of the redacted version of the Workpapers to the Commission no later than 90 days after receiving the Workpapers from the Commission for copying.

6. **Personnel Permitted to Access Information.** All Confidential Information produced pursuant to this Protective Order shall be made available to parties solely through counsel for the parties, including in-house counsel, or persons working under the supervision of counsel within the following categories:

Attorneys, including in-house counsel, actively engaged in the conduct of this proceeding, secretaries, paralegal assistants, and employees of such attorneys to the extent reasonably necessary to assist in the review of the Supporting Data or Workpapers and the preparation of pleadings in the proceeding; and

Any persons requested by counsel of record to furnish technical or other expert services, or otherwise to prepare material for the proceeding. In addition, disclosure to personnel who would be in a position to use such information for competitive, commercial or business purposes shall be permitted only upon sworn certification by counsel requesting such disclosure that he or she has used his or her best efforts to obtain personnel who are not in such a position, and that such personnel do not exist.

Personnel eligible to have access to the Supporting Data and Workpapers pursuant to this paragraph, shall not be entitled to review the Supporting Data or Workpapers unless and until they sign Attachment A which states that they shall abide by the terms of the Protective Order.

7. **Notice.** Prior to giving access to the Supporting Data or Workpapers to a person authorized to be given access pursuant to this Order, counsel for the party seeking review of the Supporting Data or Workpapers shall deliver a copy of this Protective Order to such persons, and prior to disclosure, each such person shall agree in writing to comply with and be bound by this Protective Order in the form of Attachment A, attached hereto. Said counsel shall, at the time of the review of such Supporting Data or Workpapers, or as soon thereafter as practical, deliver to counsel for the party producing the Supporting Data, or to counsel for the Commission in the case of the Workpapers, a copy of Attachment A as executed, which shall show each signatory's full name, permanent address and employer, and the party with whom the signatory is associated.

8. **Location.** Any company providing Supporting Data pursuant to this Order shall designate a Washington, D.C. location at which all Authorized Parties shall be permitted access to and review of requested Supporting Data pursuant to the other terms of this Order. Any such access and review shall be limited to regular business hours after reasonable advance written notice by the requesting party. Likewise, the Commission shall designate a Washington, D.C. location at which all Authorized Parties shall be permitted to access and review the requested audit staff Workpapers pursuant to the other terms of this Order.

9. **Copies.** The producing party shall provide a copy to an Authorized Party upon reasonable request, and may charge a reasonable copying fee not to exceed 25 cents per page. The copy shall remain in the care and control of the Authorized Party(ies) at all times. Authorized Parties having custody of any copies of the Supporting Data or Workpapers shall keep them properly secured at all times.

(a) The copies are to be made by, or under the supervision of, the personnel of the party who produced such document, who will affix a stamp to each item to be copied denoting the Confidential designation of the item. The stamp shall be affixed in such a manner that the text of the Confidential Information is not obscured on either the original or any copies thereof.

(b) Counsel of record for the Authorized Party who requested the copies shall sign a statement in the form of Attachment B attached hereto verifying that the requested copy was received and designating the name and address of the individual into whose custody the copy shall be delivered. The designated representative of the producing party shall also sign Attachment B and verify to whom the copy was delivered. Access to any copies made pursuant to this order shall be limited to those persons defined in Paragraph 6 of this Order. No additional copies shall be made, unless the parties agree otherwise, or upon a showing of a good cause the Commission directs otherwise.

10. **Notes.** Authorized Parties may take notes regarding such information as may be necessary in connection with this proceeding. Such notes shall be treated in the same manner as the Supporting Data or Workpapers from which the notes were taken.

11. **Storage at the Commission.** Supporting Data filed with the Commission shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such information is released from the restrictions of this Order either through agreement of the parties, or, after notice to the parties and hearing, pursuant to the Order of the Commission Staff, the Commission, or a court. No Supporting Data or Workpapers released from the restrictions of this Order pursuant to a Staff, Commission or court order shall be disclosed until the applicable order is final and is no longer subject to any appeal to any regulatory or judicial body with jurisdiction.

12. **Security.** Authorized Parties shall use their best efforts to keep the Supporting Data and/or Workpapers secure in accordance with the terms, purposes and intent of this Protective Order. To this end, persons having custody of Supporting Data and/or Workpapers shall keep the documents properly secured during all times when the documents are not being reviewed by a person authorized to do so.

13. **Restrictions on Use.** As obtained pursuant to this Order, Authorized Parties may only use Supporting Data and/or Workpapers exclusively for the purpose set forth in paragraph 2 of this Order and shall not be used or disclosed for any other purpose. The limitation shall also be construed to prohibit making decisions, participating in any decision making process or rendering advice, legal or otherwise, wherein any information or knowledge derived from said information is used in any manner other than for the purpose set forth in paragraph 2, above.

14. **Use in Pleadings.** Authorized Parties may disclose, describe, or discuss the Supporting Data or Workpapers in any pleading filed in CC Docket No. 99-117, ASD File No. 99-22, but only if they file both a confidential version and a public version of the pleading under the following procedures:

- (a) Confidential Version. (i) Any pleading that includes Supporting Data or Workpapers, in whole or in part, shall be filed under seal and clearly marked "Contains Confidential Information Subject to Protective Order, CC Docket No. 99-117, ASD File No. 99-22" and covered by a separate letter citing this Order. (ii) Subject to exceptions noted in (iii) below, any pleading containing such information shall be served only upon the Commission and the producing party. (iii) Other parties to this Protective Order may view the Confidential Version under the terms of this Protective Order.
- (b) Public Version. Any party filing a pleading that contains Supporting Data or Workpapers, in whole or in part, shall also prepare a separate public version in which all such information has been redacted. [As I mentioned, I found this somewhat difficult to do with our own Comments; so, I anticipate we'll be making objections to other parties' redaction or failure to redact.] (i) On the same date that the Confidential Version is filed with the Commission, the party shall hand deliver the Public Version to the producing party(ies). (ii) The producing party(ies) has five working days following receipt to object in writing to the filing of the Public Version. (iii) If no objections are filed, on the sixth working day following the delivery of the Public Version, the Public Version will be filed with the Commission for inclusion in the public record and will be served on all parties to this proceeding.
- (c) Computation of time. The time for filing responses to both the public and confidential versions of the pleading shall be computed from the day after the filing of the Public Version. See 47 C.F.R. § 1.4(b) of the Commission's rules.

15. **Obligation to Return Material.** Within thirty (30) days after completion of this proceeding and any judicial review, the producing party may request the return of all Supporting Data or Workpapers furnished under the terms of this Protective Order. Such information must be returned within thirty (30) days after the request. Notes taken with regard to such information shall be destroyed at the time that the information is returned, in the presence of the party who produced the information if that party so requests. Supporting Data or Workpapers made part of the record in any proceeding shall remain in the possession of the Commission, and, unless otherwise agreed by the party that produced the information or as provided by future order, shall continue to be subject to the protective requirements of this Protective Order.

16. **Other Rights Preserved.** The signing of the Protective Order shall in no way constitute any waiver of the rights of any party to this protective order to contest any assertion of confidentiality or to appeal any finding that specific information is Confidential Information or should be subject to the protective requirements of this Order. The designation of any information as Confidential Information may be challenged before the Commission, or a court

having jurisdiction to review a Commission determination, that said material should be so classified.

17. **No Waiver.** Disclosure of Confidential Information under this Protective Order shall not be deemed a waiver by either the producing party or the vendors the data of which are contained therein, in any other proceeding, agency, or court, of any privilege or entitlement to confidential treatment. Any parties receiving access to Confidential Information under this Order:

- (a) agree not to assert any such waiver;
- (b) agree not to use information derived from Confidential Information in any proceeding other than this one or for any purpose unrelated to other than this proceeding; and
- (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

18. **Right of Review.** Nothing contained herein shall limit any party's right to judicial review of any decisions rendered hereunder.

19. **Violations.** Should an Authorized Party violate any of the terms of this Order, it shall immediately convey that fact to the Commission and to the producing party. Further, should such violation consist of improper disclosure or use of Supporting Data or Workpapers, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the producing party, in writing, of the identity of each party known or reasonably suspected to have obtained the Supporting Data or Workpapers through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order by Authorized Parties, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the producing party at law or in equity against any party using Confidential Information in a manner not authorized by this Order.

20. **Effective Date of the Order.** This Protective Order is issued pursuant to Sections 4(i), 4(j) and 220(f) of the Communications Act as amended, 47 U.S.C. § § 154(i), (j), 220(f) and 47 C.F.R. § 0.457(d). The Order constitutes an Order of the Commission and an agreement between the Authorized Party executing the attached Declaration (Attachment A) and the producing party. Because of the confidential and proprietary nature of the Supporting Data and Workpapers, both as to the RBOCs and as to third parties, as recognized by FOIA Exemption No. 4, and because of the important public interest in keeping FCC audit workpapers confidential, as reflected by FOIA Exemptions No. 4 and 5, the Commission anticipates that one or more parties may feel it necessary to challenge the Order. Because it is possible that piecemeal challenges to the Order might result in the disruption of the procedural schedule in this proceeding and lead to inconsistent results, the Commission rules that this Order shall not be effective as to any RBOC or the FCC during any period in which an application for review

("AFR") or other challenge to this Order is pending or otherwise unresolved. The Order shall become effective the earlier of:

- (a) ten (10) working days after the latest deadline for filing any challenge to the Order; or
- (b) ten (10) working days after the resolution of any challenge to the Order becomes final, if the Order remains effective after the resolution of that challenge.

Attachment A to the Protective Order

Declaration

IN THE MATTER OF _____
CC Docket No. 99-117; ASD File No. 99-22

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding ("Supporting Data") and the treatment of audit workpapers prepared by Commission auditors ("Workpapers"). I understand that the Supporting Data and/or Workpapers shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for the purpose of addressing Issue No. 2 in the Notice of Inquiry issued in this docket on April 7, 1999. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the party who produced the Supporting Data.

(signed) ____
(printed name) ____
(representing) ____
(title) ____
(employer) ____
(address) ____

(phone) ____

(date) ____

Attachment B to the Protective Order

Statement of Receipt

I, ____, as (COUNSEL OF RECORD) OR (DESIGNATED REPRESENTATIVE) of ____ (insert name of party) have received a sealed envelope marked "Confidential Information" for the purpose of making copies of said confidential information, pursuant to paragraph ____ of the Protective Order. These copies are to remain in the custody of:

Name: ____

Title: ____

Representing: ____

Address: ____

Facsimile No: ____

Signed on this ____ day of ____, 1999

Name: ____